

ORDINANCE NO. 1865

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI
PARTIALLY RESCINDING AND AMENDING DEVELOPMENT AGREEMENT
PERTAINING TO THE DEVELOPMENT OF 220 ACRES LOCATED ON THE
SOUTH SIDE OF HARNEY LANE BETWEEN STATE HIGHWAY 99 AND THE
UNION PACIFIC RAILROAD TO THE WEST (REYNOLDS RANCH)
(DEVELOPMENT AGREEMENT 06-GM-01)

=====

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. The Lodi City Council passed Ordinance No. 1785 approving a Development Agreement covering the following property:

**220 ACRES LOCATED ON THE SOUTH SIDE OF HARNEY LANE
BETWEEN STATE HIGHWAY 99 AND THE UNION PACIFIC
RAILROAD (UPRR) TO THE WEST - ASSESSORS PARCEL
NUMBERS 058-110-04, 058-110-41, 058-130-06, 058-130-07,
058-130-08, 058-130-09, 058-130-11, 058-130-15, 058-130-16,
058-130-21, 058-130-22, 058-130-24, AND 058-130-04.**

SECTION 2. San Joaquin Valley Land Company LLC. ("SJVLC"), the sole party to the above referenced Development Agreement, requested that the agreement be partially rescinded and amending by letter of September 24, 2012, a copy of which is attached hereto and incorporated by reference. However, SJVLC, Citizens for Open Government and the City entered into a settlement agreement dated August 26, 2006 ("Settlement Agreement"), the obligations of which were incorporated into the Development Agreement and into the California Environmental Quality Act (CEQA) approvals set forth in Resolution 2006-162. This ordinance shall not terminate any of the obligations set forth in the Settlement Agreement, Moreover, CEQA Resolution 2006-162 shall continue in full force and obligate Frontiers to comply with all of the obligations set forth in the Settlement Agreement.

SECTION 3. The City Council hereby finds that partial termination of the Development Agreement and amendment as set forth in the attached Mutual Agreement to Terminate Development Agreement is in the best interest of the City to ensure that any construction is subject to the new impact mitigation fee program, and to eliminate conditions in the Development Agreement that could present barriers to housing construction in the current economy.

SECTION 4. The City Council hereby finds that the partial termination of the Development Agreement and amendment as set forth in the attached Mutual Agreement to Terminate Development Agreement is consistent with the General Plan land use designation and the zoning for the proposed Development.

SECTION 5. The City Council hereby adopts Ordinance No. 1865 partially rescinding and amending the Development Agreement by and between the City of Lodi and SJVLC as set forth in the attached Mutual Agreement to Terminate Development Agreement. However, the Settlement Agreement and CEQA Resolution 2006-162 shall continue in full force and obligate SJVLC to comply with all of the obligations set forth in the Settlement Agreement.

SECTION 6. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 7. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

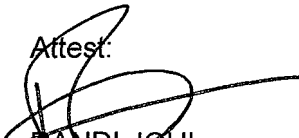
SECTION 8. This ordinance shall be published one time in the "Lodi News-Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall take effect 30 days from and after its passage and approval.

Approved this 17th of October, 2012



JOANNE MOUNCE
Mayor

Attest:

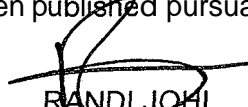

RANDI JOHL
City Clerk

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State of California
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1865 was introduced at a regular meeting of the City Council of the City of Lodi held October 3, 2012, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held October 17, 2012, by the following vote:

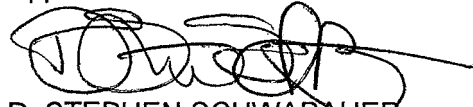
AYES: COUNCIL MEMBERS – Hansen, Johnson, Katzakian, Nakanishi,
and Mayor Mounce
NOES: COUNCIL MEMBERS – None
ABSENT: COUNCIL MEMBERS – None
ABSTAIN: COUNCIL MEMBERS – None

I further certify that Ordinance No. 1865 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.



RANDI JOHL
City Clerk

Approved as to Form:


D. STEPHEN SCHWABAUER
City Attorney

**san joaquin
valley land
company•llc**

August 13, 2012

Mr. Rad Bartlam, City Manager
City of Lodi
221 W. Pine Street
Lodi, CA 95240

RE. Request to Terminate Reynolds Ranch Development Agreement

Dear Rad:

This letter concerns the Development Agreement, ("DA"), for the Reynolds Ranch project approved on August 30, 2006 by the Lodi City Council

On behalf of SJVLC, I am requesting that the DA be terminated. The project is not sustainable financially with the DA in effect due to the combination of the cost of the obligations and the much lower land values since the DA and the project were originally approved in 2006. We understand that we will lose any benefits contained in the DA upon termination.

Please contact me at your earliest convenience so that we may discuss the steps necessary by us and the City to place this item on a City Council meeting agenda as soon as possible.

Sincerely,



Dale N. Gillespie, Managing Member
San Joaquin Valley Land Company, LLC

cc: SJVLC members

MUTUAL AGREEMENT TO TERMINATE DEVELOPMENT AGREEMENT

This ~~Mutual~~ Agreement to Terminate Development Agreement (Agreement) is made this ____ day of _____, 2012 by and between the City of ~~Lodi~~, a California general law city (*Lodi*) and San Joaquin Valley Land Company LLC (Landowner or Developer) and terminates that certain Development Agreement entered into by the parties on September 6, 2006 (Development Agreement) regarding the Reynolds Ranch Project (~~the~~ "Project").

1. RECITALS.

A Landowner owns or controls certain real property generally known as the Reynolds Ranch Project and more specifically described in Exhibit A which is attached hereto and incorporated herein by this reference.

B. In 2005 Blue Shield of California, ("BSC"), which at the time employed over 600 employees in 3 separately leased Lodi facilities, and constituted one of Lodi's largest private employers, desired to consolidate their operations into a single owned location and thereafter expand their employment to 1100 employees. Despite ~~best~~ efforts by the City of Lodi, BSC was unable to find a suitable location ~~within~~ the then current Lodi municipal boundary and subsequently BSC decided to locate its new facility in Stockton.

C. The City of Lodi was discouraging residential development applications during ~~this~~ period of ~~time~~, as it anticipated updating Lodi's General Plan, a process which ~~had~~ not yet ~~begun~~.

D. During ~~this~~ same time, Landowner proposed developing a mixed use project adjacent to Highway 99 and ~~South~~ of Harney Lane ~~that~~ would be designed to accommodate Blue Shield's ~~needs~~ in the proposed Project. The Project ~~as~~ conceived and designed included approximately 1,100 residential ~~units~~ of ~~various~~ types, ~~office~~uses, and an anchored retail shopping center.

E. Negotiations between BSC and Landowner resulted in an enforceable agreement in favor of BSC purchasing a 20.5 acre campus ~~within~~ the ~~Project~~ site contingent ~~upon~~ Lodi and San Joaquin County LAFCo approving the annexation of the Project site to ~~Lodi~~ and ~~Lodi~~ granting related land use entitlements ~~within~~ a certain time frame. BSC leveraged the fact that they had already secured the Stockton site due to BSC's ~~inability~~ to earlier locate a suitable site in Lodi to negotiate a substantial land price concession and a ~~cap~~ on its contribution to ~~infrastructure~~ far below BSC's fair ~~share~~ contribution.

F. Under State law and local ordinance development agreements between Lodi and land owners are optional. Lodi and Landowner entered into the Development Agreement, ("DA"), for purposes of, on Developers part: securing vested development rights; and on City's part: securing community benefits and applying conditions of approval that were functionally equivalent to the conditions of approval that were anticipated to be imposed by the yet to be adopted General Plan update.

G. On September 6, 2006 Lodi and Landowner entered into the Development Agreement, effective on October 6, 2006.

H. Lodi and LAFCo approved the annexation and related entitlements in August, 2006 and January, 2007 respectively. Landowner funded and constructed substantial dedicated public infrastructure for Phase 1 of the Project in order for BSC to construct and occupy the facility within BSC's identified time constraints. The public infrastructure, including the re-alignment, dedication of land for rights of way totaling almost 12 acres, and construction of the Hwy 99 frontage road, (now called Reynolds Ranch Parkway), to accommodate future reconstruction of the Hwy 99/Harney Lane interchange, in addition to a sewer line oversized to accommodate future development East of Hwy 99, was not reimbursed by the City of Lodi.

I Landowner completed Phase 1 of Reynolds Ranch and BSC completed their 160,000 square foot facility and moved in November of 2008, adding 500 new jobs to the 600 hundred jobs saved for a total of 1,100 jobs.

J. Economic conditions deteriorated rapidly beginning in 2007 before any residential development plans could be filed for and processed.

K. Landowner continued to attempt to develop other portions of the Project in spite of highly negative economic conditions without success, except for the Phase 2 retail shopping center. Both Costco and Home Depot became interested in the regional draw of Reynolds Ranch to a population center of over 190,000 people due to its proximity and access to Highway 99 and nearby roads that access the many foothill communities and north Stockton. However, though the letters of intent were signed for these two retailers in 2007, both postponed their development and construction plans with Costco starting in October 2010 and Home Depot starting in August 2011, which resulted in greatly reduced land sales prices and lower reimbursements of their offsite obligations otherwise owed to Landowner. In addition, significant unreimbursed holding costs were incurred between 2007 and 2010.

L. Phase 2 of Reynolds Ranch is currently being completed and Costco and Home Depot have opened. Many of the improvements in this phase have far-reaching regional benefits. The Phase 2 public improvements have also not been reimbursed to developer including two new signals on Reynolds Ranch Parkway, Developer's \$1.4 million cost for the Hwy 99/Harney Lane interim interchange improvements, and the engineering and related soft costs for the Hwy99/Harney Lane interim interchange improvements.

M. The Costco ~~store~~ generates significant sales ~~tax~~ revenue for Lodi. It also employs at least 180 employees, 20 in management positions. Approximately ~~two-thirds~~ of Costco's sales ~~are~~ to non-Lodi residents, creating additional sales opportunities for local merchants.

N. Home Depot ~~opened~~ its first LEED-certified 135,000 square foot store, which is one of the only "new-market" stores it opened in 2012. ~~This store draws~~ national attention ~~as~~ the only Home Depot store outfitted ~~with~~ state of the ~~art~~ energy management systems ~~as~~ part of a ~~U.S.~~ Department of Energy ~~grant~~. The Lodi ~~store is~~ the test site for these systems ~~on an~~ on-going basis. The Home Depot employs approximately 150 employees, most ~~full~~ time. It is projected to create ~~significant~~ sales ~~tax~~ revenue to the City. Like ~~Costco~~, approximately two-thirds of the projected sales volume is expected to be derived from non-Lodi residents.

O. Subsequent to the entry of the Development Agreement, the City adopted its anticipated General Plan but that ~~General~~ Plan did not ~~contain~~ many of the conditions anticipated in the Development Agreement.

P. Government Code Section **65868** authorizes the parties ~~to~~ terminate the Development Agreement upon ~~mutual~~ consent and providing the public notice required by Government Code Section **65867**.

Q. Therefore, the City finds the public interest has been ~~served~~ by locating the Blue Shield, Home Depot, Costco and other retail users at Reynolds Ranch. Further, the City finds the exactions imposed by the Development Agreement represent significant obstacles to the development of the residential ~~aspect~~ of the approved mixed use plan and the City ~~will~~ not enjoy the additional benefits flowing ~~from full build out~~ of ~~this~~ approved mixed use Project. Further, the City finds ~~that~~ the exactions ~~imposed~~ by the Development Agreement place the residential ~~aspect~~ of the mixed use plan at a fatal economic disadvantage in relationship to other ~~pending~~ or future residential projects in Lodi which do not ~~carry~~ the weight of the Development Agreement's conditions. The City further finds that conditions and ~~terms~~ imposed by the recently enacted General Plan Update are appropriate ~~to~~ the residential ~~aspects~~ of the Reynolds Ranch Project, fulfill the public interest and are the functional equivalent to the ~~ad hoc conditions~~ imposed by the Development Agreement.

2. TERMINATION OF DEVELOPMENT AGREEMENT.

Subject to the terms and conditions ~~contained~~ herein, the parties ~~terminate~~ the Development Agreement ~~as~~ of this Agreement's effective date. Thereafter the parties ~~shall~~ have ~~no rights~~ or duties to one another (except ~~as set~~ forth herein) or any third party from any and ~~all~~ rights or obligations ~~arising~~ from the Development Agreement, whether or not such ~~rights~~ or obligations have been ~~fully~~ or partially enjoyed and/or ~~performed~~ or if the enjoyment of the right or performance of the obligation ~~has~~ not yet happened. It is the intention of the parties that upon the effective date of ~~this~~ Agreement the parties ~~shall~~

no longer have any rights or obligations between themselves under the Development Agreement except **as** set forth herein.

A. Obligations **Arising** from Existing Benefits: The obligations set forth below, which were triggered under the Development Agreement prior to this Termination Agreement but have not yet been satisfied by the Developer shall continue in **full** force **and** effect. In the event Developer has failed to meet any of the obligations **set** forth below at the time Developer applies for any development entitlements within the Project, City will be entitled to refuse to process the application **until** the below **listed** obligations **are** fully satisfied.

- i) Electric Utility Impact **Fees**. Developer **shall** pay **an** amount to be billed by the City not to exceed **\$291,336.28** in electric utility Line Extension Costs called for in paragraph **6.4.10** of the Development Agreement by **January 1, 2013**.
- ii) Developer and Citizens for Open Government and the City entered into **a** settlement agreement dated August **24, 2006** ("Settlement Agreement"), the obligations of which were incorporated into the Development Agreement and **into** the CEQA approvals set forth **in** Resolution **2006-162**. **This** agreement shall not terminate any of the obligations set forth in the Settlement Agreement. Moreover, CEQA Resolution **2006-162** shall continue in full force and obligate Developer to comply **with** all of the obligations set forth in the Settlement Agreement.
- iii) Agricultural Mitigation. Developer shall satisfy the Agricultural Mitigation Requirements set forth **in** Paragraph **6.1.2** and **6.4.11** of the Development Agreement **at** the times **required** by those sections. **This obligation, among others, is also included in the Settlement Agreement referenced in section 2.A.ii above.**
- iv) Maintenance of Public Improvements. Developer **shall** comply **with the** requirements of Paragraph **6.4.5** of the Development Agreement.
- v) Dedication of Fire **Station** Property. Developer **shall** comply with the requirement of Paragraph **6.4.6** of the Development Agreement to dedicate property for a Fire **Station**. The remainder of the requirements of paragraph **6.4.6** **shall** be **terminated**.
- vi) **Public Art**. Developer shall comply with the requirement to **Install** public Art set forth in the Project set forth in Paragraph **6.4.8** of the Development Agreement. The **\$60,000** amount **shall** be reduced by the ratio **that** the acres of Project land developed as of the **date**

of this Agreement bears to the ~~total~~ acreage of the Project (52.7 acres/220 acres which equals \$14,373.00).

3. SUBSEQUENT DEVELOPMENT AND CONSTRUCTION SHALL BE SUBJECT TO CURRENT ORDINANCES, STANDARDS AND POLICIES.

A. Portions of the Project Already Constructed.

Those portions of the Project already constructed shall be regarded as vested from any changes in the ordinances, standards and policies in effect at the time the Development Agreement was effective and shall not be subject to any new ordinances, standards or policies enacted subsequently.

B. Portions of the Project not Yet Constructed.

Those portions of the Project that have not yet obtained a building permit from the City of Lodi shall be subject to the ordinances, ~~standards~~ and policies in effect at the time the building permit application is submitted unless Landowner first obtains a vested right affecting the applicability of such ordinances, ~~standards~~ and policies through a vesting tentative map, a development agreement or some other form of right.

4. MISCELLANEOUS PROVISIONS.

A. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall ~~not~~ be affected thereby, and each such term and provision of this Agreement shall be valid, and shall be enforced to the fullest extent permitted by law.

B. Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein ~~contained~~. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act except those of the ~~waiving~~ party, which shall be extended by a period of time ~~equal~~ to the period of the delay.

C. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the parties hereto.

D. Professional Fees. If either party commences an action against the other to interpret or enforce any of the terms of this Agreement or because of the breach by the other party of any of the terms hereof, the losing party shall pay to the prevailing party reasonable attorneys' fees, costs and expenses and court costs and other costs of action incurred in connection with the prosecution or defense of such action, whether or not the action is prosecuted to a final judgment. For the purpose of this Agreement, the

terms "attorneys' fees" or "attorneys' fees and costs" **shall** mean the fees and expenses of counsel to the parties hereto, which may include printing, photostating, duplicating and other expenses, **air** freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred. The term "attorney" **shall** have the same meaning as the **term** "counsel."

E. **Entire Agreement.** This Agreement (including all Exhibits attached hereto) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes **all** prior understandings with **respect** thereto. This Agreement may not be modified, changed, supplemented, superseded, canceled or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized **in writing** or **as** otherwise expressly permitted herein. The parties do not intend to **confer** any benefit hereunder **on** any person, **firm** or corporation other **than** the parties hereto and **lawful** assignees.

F. **Time of Essence.** City of Lodi and Landowner hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under **this** Agreement by the party **so** failing to **perform**.

G. **Construction.** Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular **shall** include the plural and the masculine shall include the feminine and vice versa. **This** Agreement shall not be construed **as** if it had been prepared by one of the parties, but rather **as** if both parties had prepared the same. Unless otherwise indicated, **all** references to paragraphs, sections, subparagraphs and subsections are to this Agreement. **All** exhibits referred to in this Agreement **are** attached and incorporated by this reference.

H. **Governing Law.** The parties hereto acknowledge **that this** Agreement **has** been negotiated and entered into in the State of **California**. The parties hereto expressly agree that this Agreement **shall** be governed by, interpreted under, and construed and enforced in accordance with the laws of the **State** of California.

I. **Days of Week.** If any date for performance herein falls **on** a Saturday, Sunday or holiday, **as** defined in Section 6700 of the California Government Code, the time for such performance shall be extended to 5:00 p.m. on the next business day.

J. No Construction Against Drafting Party. The parties agree *that* this Agreement was jointly negotiated and jointly drafted and that ~~is~~ shall not be interpreted or construed in favor of or *against* any party on the ground that the party or the parties' attorney drafted this Agreement.

IN WITNESS THEREOF this MUTUAL AGREEMENT TO TERMINATE DEVELOPMENT AGREEMENT is effective this ____ day of _____, 2012.

CITY OF LODI, a municipal corporation

ATTEST:

RANDI JOHL
City Clerk

KONRADT BARTLAM
City Manager

APPROVED AS TO FORM:

SAN JOAQUIN VALLEY LAND COMPANY, LLC

By: _____
D. STEPHEN SCHWABAUER,
City Attorney

By: _____
Name:
Title: